



DEPARTMENT OF THE NAVY  
VICE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

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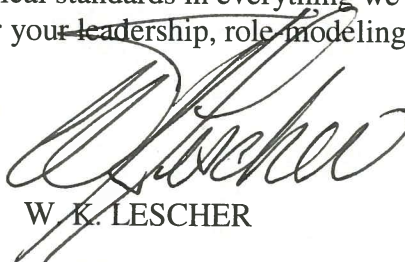
15 Mar 22

**MEMORANDUM FOR ALL FLAG OFFICERS**

Subj: ANNUAL STANDARDS OF CONDUCT GUIDANCE

Encl: (1) Supplement to the Standards of Conduct Guidance

1. As leaders, we own our decisions and the processes used to make them – this ownership is absolute when it comes to standards of conduct. The enclosed guidance provides best practices to aid in decision-making. I encourage you to have robust conversations with your teams on this guidance, and foster an environment where subordinates are empowered to communicate fearlessly in executing their duties.
2. We have all seen the impact of ethical failures on our Navy. When we fall short in this area, the recovery period is long and the repercussions deep. Public trust is eroded, fleet morale is impacted, and mission readiness is degraded. Building and inspiring trust is at the heart of how we must lead to sharpen our warfighting edge and ensure our Navy is ready for combat. For this reason, I am a strong advocate of applying the sunshine theory of transparency to *everything* we do. Embrace the idea that every action you take is ready for full scrutiny, with the full light of day illuminating to all stakeholders our decision-making behavior and actions. Character and consistency are critical, and upholding our core values through every action we take demonstrates our commitment to service and to maintaining the faith of our team and our Nation.
3. As a learning organization, we regularly examine standards and take ownership of the imperative to get better. I expect you to incorporate ethics in the regular drumbeat of conversations with your team, communicate your own expectations on ethics to your subordinates, and ensure mandatory annual ethics training is completed by 30 November.
4. Our Navy derives its strength from our people, our commitment, and our values. Each is strengthened by demonstrating the highest ethical standards in everything we do. This is a non-discretionary, no-fail, mission. Thank you for your leadership, role modeling, and enforcement of exceptional ethical standards of conduct.



W. K. LESCHER

ANNUAL  
STANDARDS OF CONDUCT  
GUIDANCE

## **Supplement to the Standards of Conduct Guidance**

The following practice guides are provided to assist you and your staff in implementing the standards and understanding the rules as articulated in the cover memorandum.

### Practice Guides

1. Principles of Ethical Conduct
2. Travel Guidance
3. Gifts
4. Communications with Industry
5. Command Coins
6. Flag Aides
7. Enlisted Aides
8. Use of Government Vehicles
9. Post-Government Employment
10. Political Activities and Anti-Lobbying Guidance
11. Financial Disclosure Reporting
12. Relations with Non-Federal Entities

### Appendices - Best Practice Templates and Forms

- A. Flag Travel Worksheet
- B. Gift Disposition Form
- C. Protocol-Official Representation Event Review Form
- D. Schedule Review Form
- E. Gifts in Foreign Area Form
- F. Meeting Request Form
- G. Engagement MFR Template
- H. Annual Ethics Audit Checklist

## 1. PRINCIPLES OF ETHICAL CONDUCT

1. **Key References:** Executive Order 12731; 5 C.F.R. Part 2635; 5 C.F.R. Part 3601

2. **Principles**

a. Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

b. Employees shall not hold financial interests that conflict with the conscientious performance of duty.

c. Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

d. An employee shall not, except as provided for by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

e. Employees shall put forth honest effort in the performance of their duties.

f. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

g. Employees shall not use public office for private gain.

h. Employees shall act impartially and not give preferential treatment to any private organization or individual.

i. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

j. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

k. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

l. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.

## **1. PRINCIPLES OF ETHICAL CONDUCT**

m. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

n. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

## **2. TRAVEL GUIDANCE**

### **1. General Guidance**

a. **Key References:** JTR Ch. 1-4; DoDD 4500.56; DoD Conference Guidance, Version 4.0; SECNAVINST 5050.6; DoD Senior Leader Attendance at Outside Events (31 Jan 18); SECNAV M-5210.1; SECNAVINST 5720.44C; DEPSECDEF Memo of 27 Apr 18 on Maximum Use of DoD Lodging

#### **b. Guidance for All Travel**

(1) No area of standards of conduct is more closely scrutinized and complex than travel. All employees must ensure their travel complies with applicable regulations. Additionally, official travel plans for all Flag Officers shall be reviewed by your assigned Ethics Counselor prior to the commencement of travel. This review is not required when on PCS orders, for travel of individuals selected to serve on a promotion selection board, or if you are a reserve component Flag Officer traveling to commence or end a period of active duty assignment or inactive duty to your assigned SELRES billet location.

(a) You shall ensure funds are spent judiciously by viewing every expense through the lens of efficacy, efficiency, and its contribution to mission.

(b) As stated in the Joint Travel Regulations, your obligation is to ensure “only the travel necessary to accomplish the Government’s mission effectively and economically” is authorized and that internal controls are in place to encourage and enable compliance.

(c) Government-funded travel should be undertaken only when the objective for the travel cannot be achieved through less costly means such as phone or video-teleconference. The unavailability of such less costly means must be certified in each travel authorization.

(d) A traveler must exercise the same care and regard in incurring expenses as would a reasonably prudent person traveling at personal expense.

(e) The number of travelers should be no greater, and the duration of travel no longer, than required to fulfill the mission.

(f) Travel to changes of command, retirements, funerals, and other similar events should not be paid for with government funds unless the role of the traveling official is official (e.g., presiding, speaking, sitting on the dais). The component head or designee may determine that circumstances justify sending an official representative to a funeral or change of command ceremony; however, only the senior official present may attend in an official capacity when serving as the agency representative (i.e., there may not be multiple agency representatives).

(g) Ensure a documented review by an Ethics Counselor as well as your determination that participation is essential official business in the Government’s interest.

## 2. TRAVEL GUIDANCE

(h) If attending an event requiring conference approval, ensure compliance with all applicable regulations. Conference attendance must advance the Navy's mission while ensuring proper fiscal discipline. Conference determinations must be approved in writing with advice from an Ethics Counselor. Limit senior leader participation at outside events to promote the efficient use of resources in accordance with DoD senior leader attendance guidance. Conference approval is not required for virtual conferences where there is no cost to the Government.

(i) When traveling on official orders, you must list the installation where you are performing any portion of your TDY on your travel orders. With few exceptions (e.g., group lodging, protocol purposes), all travelers are required to stay in DoD lodging booked through DTS when conducting business onboard an installation. If TDY to an Integrated Lodging Program site, travelers are to use government lodging, privatized lodging of DoD Preferred commercial lodging before other lodging options. Even when using non-DoD lodging, travelers must book lodging through DTS and remain within per diem limits unless they warrant an exception to book outside DTS or can satisfy the criteria for Actual Expense Allowance (AEA). Traveler convenience is an impermissible justification for booking outside DTS or considering AEA.

(2) The Navy and our nation expect Navy leadership ready to make critical decisions 24/7, and to be ready to go into a wartime Battle Tempo without warning. Overseas travel, especially for Commanders stationed OCONUS, should be carefully planned to allow adequate rest. If in doubt, never hesitate to contact VCNO's office for clarification.

(3) Outreach events that demonstratively help achieve the Navy's mission may qualify as "official."

(a) Conduct deliberate planning and coordinate with CHINFO to avoid saturating a geographic area with Flag Officers.

(b) Provide CHINFO with post-travel trip reports to support CHINFO's strategic planning.

(c) Outreach and other community relations events are a risk area because they may give the appearance that a Flag Officer is gaining a personal benefit through the travel. Indicators of a personal benefit include travel to one's alma mater, travel combined with leave, travel for social or ceremonial events absent a speaking role, travel to one's home of record, and travel that coincides with family or friend activities. These are not per se prohibited, but raise optics that one should consider when planning and approving travel.

(3) DoDD 4500.56 requires commands to retain documentation on Government aircraft travel for two years. Although SECNAV M-5210.1 (SSIC) requires retention of various travel and accommodation arrangement records for two to six years and three months depending on the documents, General Records Schedule 2.8 requires employee ethics records to be retained for six years. This includes advice and counseling to employees and supporting records. Therefore,

## 2. TRAVEL GUIDANCE

retain all ethics related records to include but not limited to travel, gift acceptance, and standards of conduct memorandum for six years.

(a) Best Practice: Consider attaching completed travel reviews to orders within DTS.

### 2. Commercial Air

a. **Key References:** 41 C.F.R. Part 301-10; DoDD 4500.09E; Defense Transportation Regulation (DTR) 4500.9-R; JTR 0202; OPNAVINST 4650.15C

(1) For official business, the general rule is a traveler must use economy or coach accommodations on an airplane, train, or ship using contract city-pair airfares. Economy or coach is inclusive of contract carrier fares that may be marked “basic, standard,” or similar.

(2) Premium class accommodations<sup>1</sup> are authorized only as noted below and must be approved in advance, absent extenuating circumstances or emergencies.

(a) Economy Plus, Coach Elite Seating, or similar additional fee seating. If the authorizing official determines the cost of Economy Plus, Coach Elite Seating, or additional fee seating is in the Government’s interest or is necessary because less costly accommodations are inadequate for a traveler with a documented medical or special need, then the additional cost for seating in economy or coach class may be authorized or approved.

#### (b) Business class

1. Only business class is offered between origin/destination (e.g., Acela).  
Traveler must certify this in travel voucher.

2. Business class costs less than the least expensive unrestricted economy/coach airfare.

3. The travel is so urgent it may not be postponed, and there is no space in coach on a flight in time to accomplish the mission.

4. Competent medical authority validates medical necessity of business class travel to accommodate the member’s physical/medical requirements.

5. Upgrade necessary for exceptional security circumstances making it essential to successful performance of the mission.

6. Accommodations on foreign carriers do not provide adequate sanitation/health standards and use of foreign flag air carrier service is approved.

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<sup>1</sup> This includes, but is not limited to, business/first class airline accommodations, extra fare trains such as Acela, and other unrestrictive seating that is not economy fare.



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7. Overall Government savings (e.g., avoiding extra subsistence costs, overtime, lost productive time).

8. Non-Federal entity (to include multi-national organizations) funds travel as an official and approved gift of travel; or

9. Lengthy flight. This **does not** automatically qualify for premium class travel; the following factors must be present:

- a. Either the origin or destination point is OCONUS;
- b. Traveler has to begin work immediately after arrival;
- c. TDY purpose/mission is so urgent it cannot be delayed or postponed; and
- d. The scheduled flight time (including stopovers) is in excess of 14 hours.

(1) Passenger must demonstrate why they cannot schedule a rest period en route or at TDY site before commencing work. Premium class travel should be the exception, not the rule, for flights over 14 hours.

(2) Scheduled flight time is the time between the scheduled airline departure from the PDS/TDY point until the scheduled airline arrival at the TDY point/PDS.

e. Only applies to outbound flight unless return flight is critical and traveler cannot rest before reporting back to work.

### (c) First class

- 1. Lower class accommodations are not reasonably available;
- 2. First class costs less than the least expensive economy/coach class airfare;
- 3. Exceptional security requirements exist;
- 4. Competent medical authority validates medical necessity of first class travel and it is approved in advance, or a certified emergency exists;
- 5. First class is the only accommodation provided between origin and destination. Traveler must certify this in travel voucher; or,
- 6. Frequent flyer miles used to obtain flight (traveler should not be in uniform).
- 7. Additionally, first class is authorized when paid for by a non-Federal entity (including multi-national organizations) and when one of the other factors above is present.

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### 3. Military Air Travel (MILAIR)

a. **Key References:** DoDI 4515.13; DoDD 4500.43; DoDD 4500.56; OMB Circular A-126; OPNAVINST 4631.2E; SECNAV memo of 4 Mar 2021; VCNO memo of 31 Aug 2020

b. MILAIR is a premium mode of travel involving high costs and limited resources. Even when the criteria for use of MILAIR is satisfied, you must still consider whether commercial air travel is a more appropriate use of taxpayer resources.

c. Travel must be authorized by at least one organizational level above the senior official requesting MILAIR except for those individuals designated as Tier 1 and 2 required use travelers. For Navy travelers, MILAIR requests must be submitted to VCNO for approval unless the travel falls under a Combat Commander's approval authority.

d. For all requests not involving required users, the traveler must document:

(1) Availability of commercial air service (COMAIR) and the compelling operational consideration(s) for use of MILAIR, other than personal convenience, and why COMAIR is not reasonably available.

(2) Other appropriate factors may include specific scheduling constraints and why the schedule cannot be changed to accommodate travel by commercial air; and the need for secure communications or security risks.

(3) The requester must provide a cost comparison between MILAIR and COMAIR. The cost of rental cars, lodging, lost time, and per diem should be factored in the cost comparison.

(4) The senior traveler must personally sign the request (digital or ink signature).

e. Organic unit and tactical aircraft (e.g., fighter aircraft), having a primary mission other than carrying passengers, but that have the capacity to carry passengers, are not to be used for passenger travel.

f. When an aircraft has been scheduled to satisfy a mission requirement, secondary use of that aircraft for other official travel does not require a cost comparison.

### 4. Required Use Travel

a. **Tiers 1 and 2:** SECDEF has determined that certain DoD officials are "required use" travelers for official and/or unofficial travel. See DoDD 4500.56 for a list of these officials.

b. **Tiers 3 and 4:** Officials are not "required use" travelers, but they may use MILAIR for official travel only, and only when the exigencies of their travel needs prevent the use of commercial aircraft.

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(1) Exigencies may include the need to maintain a specific schedule due to operational or mission requirements that prevents the use of commercial aircraft.

(2) Tier 3 and 4 travelers include Commander, Fleet Forces Command; Commander, U.S. Naval Forces Europe/Africa; Commander, U.S. Pacific Fleet; Director, Naval Nuclear Propulsion; Vice Chiefs of the Military Services; Deputy Commanders of Combatant Commands.

### **5. Other Official Travel**

a. Individuals outside Tiers 1-4 may only use MILAIR for official travel in the following circumstances:

(1) Neither COMAIR nor airlift service offers reasonably available flights. Reasonably available means the flight effectively fulfills mission requirements and meets the traveler's departure and arrival requirements within 24 hours.

(2) Highly unusual circumstances present a clear and present danger.

(3) An emergency exists.

(4) MILAIR is more cost-effective than COMAIR or chartered air.

(5) Other compelling operational considerations make COMAIR unacceptable.

### **6. Unofficial Travel**

a. All unofficial travel requires full reimbursement of full coach fare.

b. Aircraft must already be scheduled for an official purpose.

c. Includes travel by a family member, non-DoD civilian, or non-Federal traveler accompanying a senior officer traveler on official business on an aircraft already scheduled for an official purpose.

d. Unofficial travel must occur on a non-interference basis, does not require a larger or additional aircraft, and has only negligible additional costs to the Government.

e. Official travelers must not be displaced.

f. Unofficial travelers must have an invitational travel authorization (ITA) and must reimburse the Government full coach fare. The ITA must be approved in writing by the senior officer traveler.

## 2. TRAVEL GUIDANCE

### 7. Spouse Travel

a. **Key References:** JTR 030501; JTR 030502; DoDD 4500.56; DoDI 4515.13

b. **Key Concepts**

(1) An authorizing official may issue invitational travel authorization (ITA) to reimburse certain travel and transportation expenses of an individual who is not a Service member or civilian employee, but is legitimately performing a direct service for the Government.

(2) As a general rule, the spouse of an authorized traveler (the DoD sponsor) may not travel on Government aircraft without reimbursing the Government, nor may Government funds be used to purchase commercial transportation for a spouse.

(3) Only in limited circumstances may authorized travelers be accompanied by their spouse using nonreimbursable travel on MILAIR or with Government funded transportation. Nonreimbursable spouse travel on MILAIR cannot result in assignment of a larger military aircraft solely to accommodate spouse travel.

c. **Spouse Invitational Travel Authorizations (ITAs)**

(1) ITAs may be issued when a travel authorizing official (AO) determines the spouse of a service member or civilian employee is legitimately performing a direct service for the Government. ITAs must be issued judiciously to ensure prudent, proper and ethical use of appropriated funds, as discussed in more detail below.

(2) When approved by an appropriate official, an ITA may be issued to a spouse traveling with their sponsor on Government aircraft. The AO may determine the spouse's presence would further the interest of the DoD, military service, or command when the spouse travels to:

(a) Attend a function in which the DoD sponsor is participating in their official capacity and in which the spouse is to address those assembled or otherwise play an active role and visible part; or,

(b) Attend a function with or without the DoD sponsor, attended by spouses of community leaders, Government officials, foreign dignitaries, or foreign military officers with whom the DoD sponsor is meeting in their official capacity; or,

(c) Attend a function, with or without the DoD sponsor, where a substantial portion of those present are military families or where the focus is on matters of particular concern to military families.

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(3) Spouses accompanying a DoD sponsor and meeting the above criteria are only authorized nonreimbursable travel on Government aircraft and are not authorized per diem or other allowances.

(4) A spouse of a service member or civilian employee may be eligible for travel allowances when the spouse's presence is determined by an AO to be legitimately performing a direct service for the Government. This determination is made using the Secretarial process for personnel within the Department and the spouse's travel must be considered mission-essential. Events that may meet the standard of legitimately performing a direct service for the Government, but must be looked at on a case by case basis, include: travel at Government expense to attend a Service-endorsed training course or briefing when the spouse subsequently performs a voluntary and direct service incident to such training or briefing (e.g., travel to attend a PCO/PXO course with a robust spouse program that provides training to spouses who will bring that information back to other command family members).

(5) An established best practice is to ensure the execution of a "spouse agenda" and prepare after-action reports upon the completion of spouse travel to record that the travel was executed as planned and to promulgate recommendations, observations, or other information that resulted from the spouse travel.

### d. Per Diem and Other Expenses

(1) The approving official may authorize per diem and/or other actual expense allowances beyond transportation costs if the dependent's travel is legitimately performing a direct service for the Government.

(2) Examples of legitimately performing a direct service for the Government include, but are not limited to:

(a) Where a spouse's unique expertise in the subject matter under discussion serves a mission critical function that would otherwise go unfilled absent the spouse's attendance.

(b) Where a spouse's unique relationship with a member or members of a group to be influenced or engaged during the trip will significantly increase the likelihood of mission success (typically applicable only to foreign diplomatic/military trips where the commander is attempting to win support for his or her position on behalf of the U.S.).

(c) Where the spouse's presence is required to ensure future readiness as the husband or wife of a senior official (e.g., Navy Flag Officer Spouse Training, NFLEX, NFOSES).

(d) Where a spouse is explicitly invited to a gender specific event that would exclude his or her spouse from attending, but has great importance to the United States or the Navy

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(e.g., a female-only event hosted by royal families or by spouses of other high level dignitaries in the Middle East, including, but not limited to, wedding side-events and women's majlis meetings).

**NOTE:** Monthly changes to the JTR may impact the guidance provided above. When planning and reviewing travel it is essential to consult the latest version of the JTR online to ensure compliance with applicable regulations.

### 3. GIFTS

1. **Key References:** 5 U.S.C. §§ 7342, 7351, 7353; 10 U.S.C. §§ 2601, 2608; 31 U.S.C. § 1353; 5 C.F.R. Part 3601; 5 C.F.R. Part 2635; DoD 5500.07-R; DoDD 1005.13; SECNAVINST 1650.1J; OPNAVINST 1700.10P; SECNAVINST 4001.2K; OPNAVINST 4001.1G; ALNAV 077/14, OGE Opinion LA-12-05 of Sep 12

#### 2. **Key Concepts**

a. **The basic rule.** An employee shall not solicit or accept, directly or indirectly, a gift from a prohibited source or given because of the employee's official position.

b. **Prohibited source.** Any person or entity that: is seeking official action by the employee's agency; does or seeks to do business with the employee's agency; is regulated by the employee's agency; has interests that may be substantially affected by the employee's official duties; or is an organization a majority of whose members fit into one or more of these categories. Employees of a prohibited source are prohibited sources.

c. **Official position.** The test is whether the gift would have been given had the employee not held the status, authority, or duties associated with the employee's Federal position.

d. **Indirect gifts.** Includes gifts to a spouse, child, parent, sibling or dependent relative or any other person including a charity on the basis of designation, recommendation, or other specification by the employee.

e. **Use Judgment.** Even though acceptance of a gift may be permitted by one of the exceptions, it is frequently prudent to return gifts, or to pay for them, rather than to accept them. Every employee has a fundamental responsibility to the United States and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain. An employee's actions should promote the public's trust that this responsibility is being met. If a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting the gift, they must decline. The potential embarrassment from declining or returning a gift is outweighed by the imperative of maintaining the public's confidence in all our actions.

f. **Solicitation.** Solicitation of gifts is prohibited. Solicited gifts may not be accepted even though an exception would otherwise permit acceptance of the gift.

g. **The Gift Disposition Form at Appendix B.** Similar form should be used to process and document all gifts. Real and personal property accepted as gifts to the Navy must be received, accounted for and disposed of consistent with property accountability policies.

h. **General Records Schedule 2.8.** Requires employee ethics records to be retained for six years. This includes advice and counseling to employees and supporting records. Commands must maintain these records accordingly, and it is a best practice for employees to keep a personal copy.

### 3. GIFTS

i. Best Practice. Prior to travel and during the entire planning process, Flag Officers or their staff are strongly encouraged to notify the command to be visited that gifts are strongly discouraged and will be declined.

#### 3. Gift Definition

a. The term “gift” is broadly defined and includes any gratuity, service, discount, entertainment, hospitality, or other item having monetary value. It includes meals, lodging, transportation, and training. The term “gift” does not include:

b. Coffee, donuts, or other modest, non-alcoholic refreshments not intended to be a meal.

c. A “presento” of little intrinsic value (e.g., coin, card, plaque, certificate) which is intended primarily for presentation<sup>1</sup>. Although value is a consideration on whether a particular gift should be accepted, challenge coins are typically presentos of little intrinsic value intended primarily for presentation and generally may be accepted as such. Command ball caps are not items of little intrinsic value.

d. Commercial benefits available to the general public or to all Government employees or to all military personnel.

e. Anything for which the employee pays fair market value.

f. Anything accepted by the Government in accordance with agency gift acceptance statutes (e.g., gifts of travel).

g. Anything paid for by the Government or secured by the Government under Government contract.

h. Free attendance at an event where the employee who is assigned to present information on behalf of the agency at the event. This includes the provision of food, refreshments, and materials furnished to all attendees as an integral part of the event.

#### 4. Common Exceptions to Prohibition against Accepting Gifts from Outside Sources

a. Gifts of \$20 or less. Unsolicited gifts (except cash) with a market value of \$20 or less per source and per occasion are permissible so long as the total value of all gifts received from a single source during a calendar year does not exceed \$50. Gifts received from a single source include not only gifts directly from an entity, such as a contractor, but gifts from any officer, employee or agent of the entity.

b. Gifts based on a personal relationship. Factors that are considered include: history of the relationship; whether the family member or friend pays for the gift from personal funds (not paid

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<sup>1</sup> This would not include an item which is itself a work of art, or one that incorporates materials of significant value, or if the object has an independent function (e.g., crystal, glassware, paintings, bottle opener, or golf ball marker) that would add additional value.



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for by their employer/business); occasion for gift (holiday, birthday, family event, etc.); and whether official action is pending that might impact the donor.

c. Gifts from foreign governments. Employees may accept a gift (or combination of gifts) of “minimal value”<sup>2</sup> (retail value in the U.S. of \$415 or less) if given and received as a courtesy from a foreign government. Gifts exceeding \$415 may be accepted on behalf of the United States, but special rules and procedures apply including coordination with and approval by DNS-13. Ethics Counselors should review all foreign gifts using the guidance contained in relevant statutes and DoD regulations pending an update to service regulations.

d. Gifts while on travel in foreign areas. Under 5 C.F.R. § 2635.204(i) acceptance of unsolicited meals, refreshments, and entertainment at an event in a foreign area requires that: (1) the market value of the gift as converted to U.S. dollars does not exceed the per diem rate for that area; (2) there is participation in the event by non-U.S. citizens, representatives of foreign governments, or other foreign entities; (3) attendance is part of the employee’s official duties; and (4) the gift is from a person other than a foreign government. ALNAV 077/14 additionally requires a prior, written determination by a GO/FO/SES Supervisor, in consultation with the Ethics Counselor, that attendance at the event is official. Only O-10s and PAS officials can make the determination for themselves after consulting with an Ethics Counselor. (The Foreign Area Gift Acceptance at Appendix E or similar form should be used to process and document all gifts of meals, refreshments or entertainment in foreign areas.)

e. Awards. Employees may accept gifts that are bona fide awards (or incident to such an award) from a person who does not have interests that may be substantially affected by the performance (or non-performance) of the employee’s official duties. Gifts related to Sailor of the Year (SOY) programs accepted under the bona fide award exception should comport with the requirements of OPNAVINST 1700.10P and be reasonable in cost and value to meet the spirit and intent of the SOY program. Gifts that exceed \$200 per year, per SOY or SOY participant should not be accepted. This includes gifts of travel, lodging, and attendance at events sponsored by non-federal entities (e.g., luncheons).

f. Widely Attended Gatherings. Employees may accept a gift of “free attendance” from the sponsor of a “widely attended” gathering if the employee’s agency determines, in writing, that the employee’s attendance is in the interest of the agency (i.e., attendance will further agency mission) and that such interest outweighs any concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties. A gathering is “widely attended” if it is expected that a large number of persons will attend, that persons with a diversity of views or interests will be present, and that there will an opportunity to exchange ideas and views among invited persons. The written agency determination must be done on a case-by-case basis for each event by the agency designee (the first supervisor in the chain of command of the employee concerned who is a commissioned officer or civilian in grade GS-11 and above; for

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<sup>2</sup> 5 U.S.C. 7432 requires the Administrator of General Services, in consultation with the Secretary of State, to redefine every three years the definition for “minimal value” for a foreign gift, based on the changes in the consumer price index for the immediately preceding three years. The implementing regulation is 41 CFR 102-42, “Utilization, Donation, and Disposal of Foreign Gifts and Decorations.” The current minimal value of \$415 was defined in Federal Management Regulation (FMR) Bulletin B-50, Foreign Gift and Decoration Minimal Value, dated 10 March 2020.

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Flag Officers in command, the agency designee may be their Ethics Counselor). Other special rules and procedures apply to this exception.

g. Informational Materials. Employees may accept unsolicited gifts of informational materials of an educational or instructive nature, provided that the aggregate market value of all informational materials received from a single donor does not exceed \$100 in a calendar year or a written determination is made by the agency designee that acceptance is permissible if exceeding \$100 in a calendar year.

h. Social Invitation. Employees may accept food, refreshments, and entertainment, not including travel or lodgings, for the employee and an accompanying spouse or other guests, at a social event attended by several persons where: (1) The invitation is unsolicited and is from a person who is not a prohibited source; (2) No fee is charged to any person in attendance; and (3) if either the sponsor of the event or the person extending the invitation to the employee is not an individual, the agency designee has made a written determination after finding that the employee's attendance would not cause a reasonable person with knowledge of the relevant facts to question the employee's integrity or impartiality.

#### 5. Gifts between Employees

a. General Rule. Employees cannot accept a gift from a lower paid employee unless they have a personal relationship that justifies the gift and they are not in a superior-subordinate relationship. Employees cannot give a gift to an official superior.

b. Exceptions. On an occasional basis, including traditional gift-giving occasions such as birthdays and holidays, the following may be given by a subordinate and accepted by a superior:

(1) Items (except cash) with a value of \$10 or less per occasion (e.g., card, command coins purchased with personal funds).

(2) Food and refreshments to be shared in the office.

(3) Personal hospitality at subordinate's home of a type and value customarily given by the subordinate to personal friends.

(4) Item given by a subordinate in connection with the receipt of personal hospitality from a superior if of a type and value customarily given on such occasions (e.g., a hostess gift of a \$15 bottle of wine).

**Note.** Gifts exceeding \$10 given to superiors during command/site visits generally do not fall within any of these exceptions and should not be accepted from subordinates. Command ball caps rarely cost under \$10 and as a general rule, should not be given to visiting senior officers.

### 3. GIFTS

**Note.** Command ball caps purchased with appropriated funds are organizational clothing and are not a permissible gift item. Command coins purchased for authorized command awards programs or Official Representation Funds also are not permissible gift items.

#### c. Special Infrequent Occasions

(1) Subordinates may give a gift or donate toward a group gift for a superior, and the superior may accept the gift on special, infrequent occasions such as marriage, illness, birth of child, or upon termination of superior-subordinate relationship, such as transfer, resignation, or retirement. Promotion does not qualify for this exception.

(2) Solicitations for group gifts may not exceed \$10 per person, but the employee is free to donate more. All donations must be voluntary and non-coercive. A group gift given on special, infrequent occasions is limited to a value of \$300. The number of donating groups should be limited.

## 4. COMMUNICATIONS WITH INDUSTRY

1. **Key References:** 18 U.S.C. § 207(c); 18 U.S.C. § 208; 18 U.S.C. § 1905; DoD 5500.07-R; SECDEF Memo of 24 Apr 17; DEPSECDEF Memo of 2 Mar 18; DEPSECDEF Memo of 21 Jun 10; UNSECNAV Memo of 4 May 11; 5 C.F.R. § 2641.204(c); OJAG Ethics Gram 19-01

### 2. **Key Concepts**

a. Our National Defense Strategy directs our intentional engagement with industry to harness innovation and modernize our force. The Navy's ability to meet the challenges of the future is enhanced by frequent, fair, even, and transparent communication with members of the industrial base.

b. There is no *per se* legal or ethical prohibition on Navy officials communicating with industry members. Nevertheless, such communication must be done in a manner that gives no preferential treatment and protects classified, sensitive and non-public information from unauthorized release. Individual Flag Officers must also be mindful of potential conflicts of interest.

c. Navy officials are encouraged to communicate with industry on matters of mutual interest, as necessary to conduct official business, while being mindful of the limitations. Prudent and proactive engagement within ethical boundaries maximizes Fleet support and enables mission accomplishment.

d. It is important to consult legal counsel early when planning to communicate with industry. Counsel can help ensure the communication or meeting does not affect the fairness and integrity of any upcoming or ongoing procurements and to ensure that individual Flag Officers avoid unintended conflicts of interest.

e. We must always comply with the ethics and procurement laws and rules governing interactions with industry, but this should not cause officials to be reluctant to engage in exchanges with industry.

### 3. **General Rules**

a. **Impartiality.** DoD officials must act impartially and not give preferential treatment to any private organization. Exercise caution to ensure that your actions do not give a competitive advantage to a particular company.

b. **Information.** Do not release or discuss any non-public information and be mindful of classification issues. Industry may request to brief their information at a higher classification level, but that does not give Government personnel the ability to likewise discuss classified (i.e., non-public) information with individuals that do not have a "need-to-know," even if they have an active security clearance.

c. **Commitments.** Do not make any commitments or promises that could bind the government. Only a warranted contracting officer or real estate contracting officer is authorized to bind the government by entering into, or changing, a contractual agreement or real property

## 4. COMMUNICATIONS WITH INDUSTRY

interest. Although you may ask informational and clarifying questions during a meeting, or ask contractors to send follow-up information, you must always preface these requests with a specific disclaimer that you are not authorizing award of any new contract or agreement, or authorizing changes to an existing contract/agreement scope of work.

d. Conflicts of interest. DoD officials must not participate personally and substantially in an official capacity in any particular matter that has a direct and predictable effect on their financial interests or those imputed to them by virtue of family or business relationships. DoD officials must also avoid the appearance of conflicts of interest.

### 4. Best Practices for Communicating with Industry

a. Group Setting. The applicable ethical and legal rules require fair and even treatment of industry representatives. Although large industry forums that are open to the public are preferable settings to inform industry of Navy needs and priorities, smaller groups and even one-on-one sessions may be appropriate in particular cases. If you engage in smaller group or one-on-one sessions, fairness requires that you must be able and willing to grant similar requests that you receive from other industry members. One-on-one meetings concerning emerging capabilities requirements not currently under contract should generally be avoided if not preceded by a broader announcement to industry that Navy is seeking information in this area.

b. Process. Route industry requests for meetings through your legal counsel for review and advice. In addition, your PAO and other senior staff members may also advise on particular factors that should be considered in deciding whether to meet with particular industry representatives. Individual commands may tailor this process to meet their specific needs or devise other methods that facilitate fully vetting and documenting contacts with industry.

(1) Meeting Request Form. Require all industry representatives to complete a meeting request form (see Appendix G) prior to scheduling an engagement to help facilitate a full staff review.

(2) Contracts. Prior to agreeing to a meeting or commencing communications, request legal counsel or the supporting contracting office identify all relevant upcoming or ongoing competitive procurements involving the specific contractor and any contractor litigation where DON is a party. This will ensure that you do not inadvertently jeopardize the integrity of upcoming or ongoing competitive procurements or affect ongoing litigation. In certain circumstances, it may be prudent to have legal counsel or a contracting officer attend these meetings.

(3) Read-Aheads. If the meeting or communication is at the request of industry, request that the industry member provide a copy of any read-ahead that may be available. This provides you additional advance details or information to assist you and your senior staff, or subject matter experts in preparing for the meeting. Be mindful of any proprietary markings on the read-ahead and handle appropriately; consult legal counsel if needed.

#### 4. COMMUNICATIONS WITH INDUSTRY

(4) Agenda. Determine an agenda in advance that will clearly identify the topics/issues that are open for discussion and those that are off-limits for discussion.

(5) Subject Matter Experts. Include appropriate subject matter experts in the discussion. They will prepare you beforehand and respond to inquiries after the meeting. Their participation enhances their ability to assist in communicating Navy positions. If under contract with the entity, it is a best practice for the contracting officer to be present and/or fully aware of the engagement.

(6) Nondisclosure Agreements (NDAs). In accordance with 18 U.S.C. § 1905, Government employees may not publish, divulge, disclose, or make known in any manner or to any extent not authorized by law any information coming to them in the course of their employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, their agency which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association except as provided by law. Consequently, Government employees should not sign NDAs provided by industry prior to any engagements.

(7) Meeting Logs. Maintain a log or other written record of all meetings with industry representatives. It is prudent to record engagement date, meeting attendees, length of meeting, and any follow-on actions. This can be helpful documentation if there are any later questions about fairness or propriety of the meeting. Appendix H contains a template for a Memorandum for the Record that accomplishes this objective. General Records Schedule 2.8 requires employee ethics records, such as industry engagement logs to be retained for six years.

c. Appearance Concern. Do not participate in a matter that presents an actual or apparent conflict between your official duties and your personal interests. Counsel, PAO, and senior staff will assist you in identifying conflict of interest issues or appearance concerns that should be considered in your decision-making process.

d. Personal Conduct. Be sure to follow the applicable gift rules and post government employment rules. For example, consult with your counsel prior to accepting any gifts from members of industry and consider whether you should accept a gift, even if you can. Additionally, post government employment rules are very specific regarding when someone is “seeking employment.” Consult with counsel to ensure you know and understand these rules and their impact on your official duties.

e. Engagement Strategy. Develop a deliberate, proactive, and comprehensive industry engagement strategy that aligns your mission responsibilities with DON and DoD strategy and position instead of simply responding to requests for meetings from industry. Leverage the knowledge and expertise on your staffs in creating strategy and utilize it in your decision-making process. Consider standardized talking points for each engagement. Be mindful of the frequency with which you are meeting with particular members of industry to avoid perception of preferential treatment.

## 5. COMMAND COINS

1 **Key References:** 31 U.S.C. § 1301; 10 U.S.C. § 1125; 5 U.S.C. § 4503; DoDI 1400.25, Vol. 451; DoDI 7250.13; SECNAVINST 3590.5A; SECNAVINST 7042.7L; 5 C.F.R. § 2635.203(b)(2); NAVADMIN 184/14; SECNAV Memo of 23 Oct 19

### 2. **Key Concepts**

a. Only CNO, VCNO, DNS, CNP, MCPON, and Officers serving in command may purchase command coins and other items for presentation with appropriated funds (APF). Only CNO and MCPON may personalize coins purchased with APF within the U.S. Navy.

b. Commanders must balance the need to formally recognize excellence in performance of duty with the continuing responsibility to conserve scarce resources.

c. A command may use Operations and Maintenance Funds (O&MN) to purchase command coins as a means to recognize outstanding performance (i.e., awards) and use Official Representation Funds (ORF) to purchase coins as an extension of the command's provision of official courtesies.

### 3. **Coins Purchased with Appropriated Funds Presented as Awards**

a. Command coins provided as awards or other presentation items must be properly accounted for in a written record that includes the name of the individual to whom the coin was presented, the date of presentation and the specific performance or achievement warranting the award. This record should be regularly audited.

b. Command coins may not be presented solely as mementos, to improve morale, as tokens of appreciation, or to recognize expected service, nor should they typically be presented to officials senior to the presenter.

c. To avoid issues in connection with contractual relationships and obligations, actual or perceived conflicts of interest, and actual or perceived acts of favoritism, command coins (as well as those purchased with private funds) should not be presented to recognize the performance of contract employees or persons, organizations, or companies having a commercial or profit-making relationship with the DoD. The single exception is if the contribution is deemed to be unrelated to and completely outside any contractual relationship with DoD and the recognition is clearly in the public interest. Even then, appearance concerns may weigh against making such a presentation.

### 4. **Coins Purchased with Official Representation Funds (ORF)**

a. SECNAVINST 7042.7L (ORF Guidelines) provides that ORF may be used to purchase mementos that have a command or official theme. Coins having a command or official theme qualify as appropriate mementos. The restrictions of NAVADMIN 184/14 do not apply to ORF coins.

## 5. COMMAND COINS

b. Consistent with SECNAVINST 7042.7L, ORF may be used for advance (non-event specific) bulk purchase of command coins or other mementos, provided the coins or other mementos purchased are reasonably expected to be presented to ORF eligible recipients by the requesting Navy leader within the fiscal year.

c. ORF mementos are to be purchased with ORF funds, and not purchased with non-ORF funds or with personal funds, even if the leader expects to have ORF available later that same fiscal year to “reimburse” the improper funding source. Items purchased with ORF shall be strictly accounted for and should not be co-mingled with other inventories.

d. Generally, a command may offer mementos not exceeding \$415 to foreign dignitaries, U.S. Government leaders or other prominent U.S. citizens (non-DoD personnel).<sup>1</sup> A command also may offer mementos not exceeding \$50 to prominent visiting DoD officials.<sup>2</sup> All Flag Officers on official visits to a foreign country are authorized to present mementos costing no more than \$50 to non-DoD individuals who would not normally qualify for ORF courtesies, and yet provide essential support such as interpreters, drivers, or hotel staff.

5. **Coins Purchased with Private Funds.** Coins given as gifts, tokens of appreciation, recognition of routine performance of duty, or to instill unit pride are not awards. Coins used this way cannot be purchased with APF, but rather should be purchased using private funds. Coins purchased with private funds may be personalized with the donor’s name. When using personal funds, commanders are not bound by the above restrictions.

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<sup>1</sup> SECNAVINST 7042.7L. See enclosure (4) for a listing of eligible officials authorized to receive official courtesies under the instruction.

<sup>2</sup> SECNAVINST 7042.7L. See enclosure (4) for a list of prominent DoD officials authorized to receive official courtesies under the instruction.



## 6. FLAG AIDES

1. **Key References:** 5 C.F.R. Part 2635; DoD 5500.07-R; DoDM 4500.36; MPM 1301-203

2. **Key Concepts**

a. Flag Aides can be employed for official or authorized Government purposes only. “Flag Aides” in this context is a broad term referring to personnel who work in direct support of Flag Officers such as Executive Assistants, Flag Lieutenants, Flag Secretaries, Protocol Officers, Flag Writers, and other enlisted personnel assigned to a Flag Officer’s personal staff, with the exception of Enlisted Aides<sup>1</sup>.

b. Flag Aides are assigned to enable Flag Officers to perform their official duties more effectively. A Flag Aide may perform duties on behalf of a Flag Officer that the Flag Officer would otherwise be required to perform in the execution of his or her official duties. Flag Officers shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

c. As a general rule, Flag Aides may not plan or coordinate unofficial personal events, or perform unofficial personal tasks, even if doing so would give the Flag Officer more time to focus on official business.

d. The standard for use of Flag Aides is more stringent than the standard governing use of Enlisted Aides. See Practice Guide (7) for a detailed discussion on Enlisted Aides.

e. Executive Assistant and Aide assignments to Flag Officers must be authorized by the CNO. The position must be reflected by billets in the activity manning documents and the wear of aiguillettes shall conform to this policy.

f. In addition to receiving annual ethics training, Flag Aides and other personnel assigned to a Front Office staff in support of a Flag Officer must receive ethics training within 60 days of assuming their respective duties.

**Examples:** The following examples illustrate some permissible and impermissible Flag Aide duties. This list is not all-inclusive. Flag Officers and their Aides should seek advice from their Ethics Counselor in cases of uncertainty. Ultimately, Flag Officers are responsible for the proper employment of their Flag Aides.

3. **Permissible duties**

a. Schedule official appointments.

b. Schedule unofficial appointments if necessary to ensure coordination with, and execution of, the official schedule.

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<sup>1</sup> It is important to distinguish between personal staff, such as aides and flag writers, compared to other military personnel who may be present but do not work in direct support of the Flag Officer.

## 6. FLAG AIDES

c. Assist with professional writing or speech writing for official events or events attended in an official representational capacity (e.g., outreach and community relations events).

d. Coordinate with family members to obtain information necessary to avoid conflicts between personal and official travel of Flag Officer.

e. Schedule medical appointments for Flag Officer.

f. Assist with obtaining prescriptions for Flag Officer at a Military Treatment Facility.

g. Act as escort for spouse or family member when that spouse or family member accompanies the Flag Officer in an official representational capacity or performs official duties.

h. Assist guests as necessary to facilitate their attendance at official ceremonies honoring the Flag Officer (e.g., retirement or promotion ceremonies). Assistance may include escorting to provide access to military facilities, but does not include facilitation of travel or lodging for personal guests. Flag Aides, and military personnel generally, may only be used to support official events that serve a valid military purpose. The overall nature of the event vice the physical location shall inform whether it rises to the level of an official event. Command sponsored retirement or promotion ceremonies, like changes of command, serve a valid military purpose and are official events regardless of their location. However, pre- and post-receptions sponsored by the Flag Officer in their personal capacity are not official events. As such, the use of military personnel to support such receptions (e.g., planning, shopping for, setting up) is not appropriate.

i. Maintain and write checks from a checking account, funded by the Flag Officer, for expenses incurred by the Flag Officer that arise from official duties (e.g., paying a restaurant bill while on official travel or purchasing mementos for official presentations). Aides may not deposit their own money in such accounts even if subsequently reimbursed by the Flag Officer. Maintenance of such accounts personally funded by the Flag Officer may be a best practice for most Flag Officers, particularly those that travel regularly with their Flag Aide or for those that utilize an Enlisted Aide to purchase food and supplies for their Government quarters.

j. Pick up meals from an official mess.

k. If it is determined to be an appropriate use of a Government Vehicle (GOV), a Flag Aide may pick up the Flag Officer in a GOV at an airport upon return from official travel for transportation to official place of duty when public or commercial services are inadequate or nonexistent. Transportation by a GOV will not be provided when the justification is based solely on reasons of rank, position, prestige, or personal convenience. *Note:* Special rules apply to use of GOVs at public airports in the National Capitol Region.

l. While on temporary duty outside the area of the permanent duty station, a Flag Aide may perform certain tasks that would not be permissible at the permanent duty station. Such tasks should relate to the duties, health, or subsistence of the Flag Officer, and take into account the Flag Officer's schedule. For example, the Aide may drive the Flag Officer from quarters to

## 6. FLAG AIDES

work, or to a gym, laundry facility, or restaurant. The Aide may also assist the Flag Officer with emergent needs such as going to the exchange to purchase uniform items needed by the Flag Officer prior to an official event. All assigned tasks must also comply with applicable regulations governing the use of GOVs and rental cars. See Enclosure (8) for a detailed discussion on the use of GOVs and rental cars.

4. **Impermissible duties.** Flag Aides may not provide personal services to Flag Officers or their families, except as provided below under the paragraph “Minor Voluntary Services,” which identifies limited occasions when performance of such services is acceptable. Generally, personal services are unofficial and therefore beyond the scope of the Flag Aide’s duties. Examples of impermissible personal services include:

- a. Pick up or drop off Flag Officer at home while Flag Officer’s car is being repaired.
- b. Provide local transportation for Flag Officer in Aide’s personal vehicle (e.g., drive Flag Officer home from office at end of workday).
- c. Repair Flag Officer’s personal vehicle or other personal property.
- d. Pick Flag Officer up at airport upon return from unofficial travel.
- e. Drive Flag Officer to or from routine medical appointments.
- f. Draft Flag Officer’s personal correspondence.
- g. Prepare Flag Officer’s income taxes. *Note:* May assist in preparing required financial disclosure forms and, where applicable, may assist in gathering data regarding the value of home-to-work transportation to claim as income.
- h. Run personal errands for the Flag Officer while in area of permanent duty station, such as picking up dry cleaning, taking car to service station, or bringing lunch from a commercial establishment.
- i. Reserving accommodations for unofficial travel.
- j. Participate in packing or unpacking the Flag Officer’s personal property, moving furniture, or supervising movers, pursuant to the Flag Officer’s PCS move.
- k. Schedule and/or coordinate personal events for family members, including medical appointments. Assist Flag Officer’s family members with personal business (e.g., pet care, private lessons, childcare, etc.).
- l. Plan an unofficial/personal party for or on behalf of spouse or family member.
- m. Transport and/or escort Flag Officer’s unofficial visitors.

## 6. FLAG AIDES

- n. Do personal shopping for the Flag Officer or their family.

5. **Minor Voluntary Services.** Flag Aides may perform personal services for the Flag Officer if such services meet all of the following criteria:

- a. Rare - provided on a one-time-only or very infrequent basis;

- b. Minor - of short duration and minimal value. (Note: With limited exceptions, the Joint Ethics Regulation forbids seniors from accepting any gift from a subordinate with a fair market value exceeding \$10. If an Aide voluntarily performs a service that could reasonably be said to have a fair market value greater than \$10, the Aide may perform the service if compensated at fair market value by the Flag Officer. An Aide may not be compensated for voluntary service that takes place during normal duty hours.)

- c. Truly voluntary - whether a service is “truly voluntary” depends on the surrounding facts and circumstances. Factors include, but are not limited to: originator of the idea for the service (Flag Officer or Aide); extent to which the service causes Aide to modify ordinary routine or plans; whether the service is provided incidental to an activity the Aide will perform anyway; and the Aide’s perception and description of the service as well as freedom to decline to perform the service.

**Caution:** While an offer may meet the criteria of rare, minor, and voluntary, often it is in the Flag Officer’s best interest to reject the offer. The criteria are difficult to establish after-the-fact and may nonetheless give the appearance of using one’s public office for private gain.

## 7. ENLISTED AIDES

1. **Key References:** DoDI 1315.09; SECNAVINST 1306.2E; OPNAVINST 1306.3C; 5 C.F.R. part 2635; 10 U.S.C. §8779

### 2. **Key Concepts**

a. Enlisted Aides are authorized for the purpose of relieving Flag Officers of those minor tasks and details that, if performed by the Flag Officers, would be at the expense of their primary military and official duties. The duties of these enlisted personnel shall relate to the military and official responsibilities of the officers, to include assisting Flag Officers in discharging representational responsibilities of their assigned positions. Flag Officers must occupy military housing, or outside the continental United States off-base quarters arranged for the Flag Officer, to be eligible for the assignment of Enlisted Aides to their personal staffs.

b. Enlisted Aides are not to be confused with other types of personal staff (Executive Assistant, Flag Writer, Flag Secretary, Flag Aide, etc.), or with Culinary Specialists who are not assigned as part of the Enlisted Aide program. Other Aides or Culinary Specialists assigned to the Flag Officer's command are not authorized to perform the duties of an Enlisted Aide in their absence. See Practice Guide (6) for a detailed discussion of Flag Aides.

c. No Flag Officer may use an Enlisted Aide for duties that contribute only to the personal benefit of the Flag Officer or their family. Flag Officers shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

d. The Flag Officer alone is responsible for determining whether duties assigned to Enlisted Aides are substantively connected to the officer's official duties and responsibilities. This is non-delegable. Due diligence must be exercised to ensure the line of authority remains clear and solely between the Flag Officer and their assigned Enlisted Aide(s).

e. Billet-by-billet justification for continued assignment of Enlisted Aides is the subject of annual reporting requirements to Congress. Flag Officers should ensure that the duties performed by Enlisted Aides are accounted for.

### 3. **Qualifying Representational Events**

a. A Flag Officer may use Enlisted Aides to support qualifying representational events. Qualifying representational events are those that are substantively related to the performance of the Flag Officer's military and other official duties and responsibilities. These include events that provide opportunities for personal interactions beyond routine day-to-day work interactions.<sup>1</sup> The overall nature of the event vice the physical location shall inform whether it rises to the level of a qualifying representational event.

b. DoDI 1315.09 provides a detailed list of the types of events Enlisted Aides can and cannot support.

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<sup>1</sup> The fact that the use of an Enlisted Aide is permitted does not necessarily mean that the use of appropriated funds is authorized for these events.

## **7. ENLISTED AIDES**

c. The following factors may be considered in determining whether an event is a qualifying representational event. Not all factors need to be present; nor should any single factor alone be conclusive.

(1) The primary focus of the event is the transaction of official business or hosting a foreign dignitary or prominent official.

(2) The event is intended to improve morale, promote esprit de corps, and develop interpersonal relationships among command members and their families.

(3) Dignitaries, civic/community leaders, or senior military personnel attend as official invitees.

(4) The event is one that Flag Officers customarily or traditionally host as part of their duties.

(5) The event is held at the Flag Officer's public quarters or other Government location.

d. The use of personnel other than an Enlisted Aide to support official functions must be reviewed on a case by case basis and should consider the policies and regulations that apply generally to the use of government resources<sup>2</sup>. This review should include the Ethics Counselor, Enlisted Aide, and Flag Officer.

### **4. Sharing/Loaning Enlisted Aides**

a. While a Flag Officer retains sole responsibility for use, supervision, direction, and performance of Enlisted Aides, it is appropriate to share/loan Enlisted Aides as follows:

(1) To another Flag or General Officer who is also authorized the use of Enlisted Aides. Enlisted Aides may be loaned for the purpose of supporting qualifying representational events. Duty hours may be adjusted to support the qualifying representational event.

(2) To another Flag or General Officer who is not assigned Enlisted Aides. When another Flag or General Officer is representing the Flag Officer to whom the Enlisted Aides are assigned at a qualifying representational event, Enlisted Aides may be loaned to that Flag or General Officer. Enlisted Aides must be authorized for each specific event in writing prior to the event.

### **5. Permissible Duties**

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<sup>2</sup> Enlisted Aides are considered on official duty when in support of a qualifying representational event. Other military personnel, such as Culinary Specialists are not in a duty status and the legal review should include an analysis of voluntary services.

## 7. ENLISTED AIDES

a. Clean and maintain only those areas of assigned quarters used for qualifying representational events, to include the common areas that provide access to these spaces or areas of assigned quarters that are used by Enlisted Aides in support of these events.

(1) *Best Practice:* When a new Flag Officer with an assigned Enlisted Aide checks onboard and moves into assigned quarters, the Flag Officer (and spouse) should walk the entire home and delineate areas of the residence that are common areas to be used for official functions and be the responsibility of the Enlisted Aide to maintain/clean. This process should conclude with a memo or other instrument establishing these areas, which should remain consistent for the duration of the officer's tenure in those quarters.

b. Minor grounds keeping, mowing, raking, watering, and yard policing.

c. Minor tasks/errands that aid the Flag Officer in the performance of their military and other official duties and responsibilities such as picking up Flag Officer's uniform dry cleaning, prescription drugs, etc.

d. Plan, prepare, arrange and conduct qualifying representational events.

e. When the Flag Officer is present, may purchase, prepare, and serve food and beverages in quarters for the Flag Officer and immediate family members who are part of the Flag Officer's household and eating with the Flag Officer. An Enlisted Aide's normal work schedule may not be adjusted for the sole purpose of providing three meals per day.

f. Clean/press the Flag Officer's uniform or civilian attire for qualified representational events.

g. Answer phone, take messages, and receive official visitors.

h. Set up and take down seasonal decorations in public areas of assigned quarters for official events and/or events which are reasonably connected to the Flag Officer's official duties.

i. Assist with PCS moves, which may include packing/unpacking of official books, military uniforms and Government issued equipment. Assistance does not include packing/unpacking personal items.

6. **Impermissible Duties.** Flag Officers may not use an Enlisted Aide for duties which have no substantive connection with the Flag Officer's military or other official duties and responsibilities or which contribute solely to the personal benefit of the officer and their families. Examples include:

a. Making beds, cleaning the bedrooms occupied by the Flag Officer or family, organizing personal property, or cleaning up after personal events held in the quarters.

b. Landscaping or grounds-keeping other than mowing, watering and general yard policing (such as trimming or planting flowers).

## 7. ENLISTED AIDES

- c. Skilled trade services such as personal computing, electrical, or plumbing other than routine upkeep and maintenance.
- d. Assisting in planning or conducting personal social events (e.g., spouse's birthday party, family reunion).
- e. Packing for a family trip and shopping for a personal gift.
- f. Operation, care, or cleaning of any privately-owned vehicle.
- g. Personal services solely for the benefit of or at the direction of dependents or unofficial guests, including any driving, shopping, private errands, or laundry services.
- h. Any form of caregiving for family members or personal guests.
- i. Any form of pet care including grooming, feeding, exercising, feces removal and veterinary visits.

7. **Role of the Spouse.** It is appropriate for a Flag Officer's spouse to collaborate closely with Enlisted Aides during planning and execution of official social functions authorized by the Flag Officer, should the spouse so desire. In most cases, a Flag Officer must be present at a function to justify use of Enlisted Aides. An exception to this rule is when the Flag Officer's spouse hosts a qualifying representational event in the absence of the Flag Officer, and the Flag Officer determines that the spouse's role in executing the function has a direct connection to the Flag Officer's official duties and responsibilities.

8. **Voluntary Paid Services.** Flag Officers may employ Enlisted Aides during their off-duty hours on a voluntary, paid basis to perform duties that are not authorized to be performed by the Enlisted Aides in a duty status. Similarly, Flag Officers may employ other military personnel or civilians in their private capacity to perform personal services for them. Pay should be at a rate commensurate with, or above, the fair market value of the work performed in accordance with the Bureau of Labor and Statistics web site at <http://www.bls.gov/oes/current/oes350000.htm>. A memorandum documenting the terms of agreement signed by all parties is a best practice. But note, ORF may not be used for a company wholly owned or operated by DoD employees or DoD individual employee.



## 8. USE OF GOVERNMENT PASSENGER MOTOR VEHICLES

1. **Key References:** 31 U.S.C. §1344; 10 U.S.C. §2637; 41 C.F.R. part 102-5; 41 C.F.R. part 102-34, subpart D; DoDM 4500.36; DoDI 4500.36; SECNAVINST 11240.20A; JTR Ch. 2-3

### 2. **Key Concepts**

a. Government passenger motor vehicles (GOVs) are for official use only. Questions about the official use of a GOV shall be resolved in favor of strict compliance with statutory and regulatory provisions. Whether a particular use is “official” is a matter of administrative discretion; however, use must be limited to transportation that is essential to the successful completion of a DoD function, activity, or operation, and consistent with the purpose for which the motor vehicle was acquired.

b. A guest of an employee authorized use of a GOV may accompany the employee on a space-available, no-increased-cost basis (Note: special rules apply to contractors).

c. TDY. GOVs may be used between TDY lodging and TDY duty sites if public/commercial transportation is inadequate or nonexistent. Additionally, if public transportation is not available or impractical, GOVs may be used for travel to places of business, eating establishments, places of worship, and similar places required for the comfort or health and welfare of the traveler. This authority does not include entertainment or recreation.

(1) Travel Status: Generally, TDY status and potential authority to use a GOV begins upon departure from the traveler’s residence or duty station. Travel may not begin or end at any other locations.

(2) Use of Rental Cars: Rental vehicles are considered “special conveyances” under the JTR. As such, the current rules allow use only for official purposes, to include transportation to and from places required for subsistence, health, or comfort while TDY. *Note:* In the Pentagon Area, the use of rental cars should be balanced against the availability of other means of transportation.

(3) Use of POV: For official use travel and when appropriate, employees should use GOV furnished vehicles, if available. If the employee chooses to use a POV instead of an available GOV, they are only authorized mileage reimbursement at the “Other Mileage Rate.”

(4) Home-to-Transportation Terminal: When in a TAD status, use of GOV from home to airport to home may be authorized when public or commercial services are inadequate or nonexistent. The activity or installation head must make the determination that it would be impractical or more costly to have the member obtain a taxi or other commercial vehicle from the normal duty station before leaving on the directed TDY. Transportation by a GOV will not be provided when the justification is based solely on reasons of rank, position, prestige, or personal convenience. *Note:* In the National Capital Region, authority is further restricted.

d. Duty-to-Domicile. Use of a GOV for duty-to-domicile travel is prohibited unless specifically authorized. Within DON, SECNAV, CNO, and CMC are authorized duty-to-

## 8. USE OF GOVERNMENT PASSENGER MOTOR VEHICLES

domicile. Additionally, SECNAV<sup>1</sup> may authorize employees duty-to-domicile when (1) essential due to highly unusual circumstances presenting a clear and present danger; (2) an emergency exists; (3) other compelling operational considerations make duty-to-domicile essential to conduct business; (4) essential for safe/efficient performance of intelligence, protective services, or law enforcement; or (5) required to perform field work. Authorization must be in writing.

e. Overseas. Outside the United States, unified combatant commanders may provide Government transportation, including duty-to-domicile, for employees and their dependents when public/private transportation is unsafe or unavailable.

### 3. Examples of Permissible Uses

a. Official business (e.g., making site visits, attending meetings, officially speaking at or participating in ceremonies or events, including when seated on the dais or when the component head or designee determines that circumstances justify sending an official representative to a funeral or change of command ceremony; however, only the senior official present may justify their use of a GOV by attending in such a representational capacity).

b. When traveling from place of duty to terminal or vice versa, use of a GOV is not per se prohibited. However, public transportation and/or shuttle service must be unavailable or impractical.

c. Traveling from place of duty to after-hours official functions, to include speaking in an official capacity on behalf of the Navy at NFE-sponsored events. GOV must return to place of duty.

d. Transporting the employee's guest with the employee, at no increased cost, to an official function.

e. While on TDY, going to the dry cleaners, barber, drugstore, local restaurant, exercise activity (e.g., gym or run location), or other places required for the traveler's subsistence, health or comfort.

f. While on TDY, for events that incorporate both a meal and entertainment, a GOV may be used if the primary purpose of the event is the meal and the distance traveled is not further than what would be required to gain subsistence at a local restaurant.

### 4. Examples of Impermissible Uses

a. Going to a private social function (e.g., unofficial birthday ball, hail and farewell, private dinner party).

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<sup>1</sup> This authority is not delegable and is limited to an initial period of 15 days, renewable for up to 90-day increments for as long as required by the circumstances.

## 8. USE OF GOVERNMENT PASSENGER MOTOR VEHICLES

b. Attending, without any official role in the event (e.g., speaking role, presiding officer, sitting on dais), a change of command or retirement ceremony. Mere attendance does not support use of a GOV.

c. Attending a widely attended gathering unless attending in an official capacity (e.g., speaking role, panel participant, etc.). Attendance at a WAG is generally in a personal capacity.

d. Transporting employees not authorized duty-to-domicile from home to an official function, or from the official function to home (impermissible even when the travel distance is less than from work to the official function).

e. Doing personal errands/business (e.g., going to the bank).

f. Going to entertainment/recreational facilities (other than exercise facilities) is prohibited while on TDY. Examples of such prohibited facilities include movie theaters, sporting events, and other similar facilities.

g. Routine medical appointments and procedures. Use of a GOV for required medical appointments (i.e., PHA or Flight Physical) may be appropriate, but may not be based solely on reasons of rank, position, prestige, or personal convenience and should be consistent with what use is permissible for other members of a command.

## 9. POST-GOVERNMENT EMPLOYMENT

1. **Key References:** 18 U.S.C. §§ 203, 205, 207, 208; 41 U.S.C. § 2103; 5 C.F.R. Part 2635; 5 C.F.R. Part 2641.201 et seq.; FY08 NDAA § 847; FY18 NDAA § 1045; FY21 NDAA § 641; DoD 5500.07-R Ch. 8-9; OGE LA-15-03 (Standards of Conduct as Applied to Social Media Use); DD Form 2945; DoDI 1000.32

2. **Consult your Ethics Counselor.** This enclosure is a general summary of the statutes and regulations that restrict or otherwise affect activities of DoD personnel after they leave Government service. Retiring Flag Officers should seek tailored advice concerning post-government employment restrictions from their assigned Ethics Counselor and retired Flag Officers may contact the legal office that supported their last command for advice on these restrictions.

### 3. **Searching for a Job While on Active Duty**

- a. If “negotiating” or “seeking employment,” you must disqualify yourself from taking official action which affects financial interests of a potential employer.
- b. The STOCK Act of 2012 requires you to notify your Ethics Counselor of the commencement of any employment negotiations or agreements within 3 days (as well as recusal, if necessary).
- c. If you are personally and substantially involved in procurement greater than \$150,000, you must promptly report all contacts from bidders regarding potential employment, even if promptly rejected.
- d. Gifts of Travel/Transportation may be accepted if customarily offered to all prospective employees.
- e. In the age of social media, there are a multitude of ways that you might contact a prospective employer and trigger the “seeking employment” rules. You are not considered to be seeking employment by merely posting your résumé on a social media account or because another user of that social media site sends you an unsolicited message or offer. However, if you respond to the message and the response is anything other than a rejection, you are considered to be seeking employment.

### 4. **Working While On Terminal Leave**

- a. OGE 278 filers must obtain written permission if working for a “prohibited source” while on terminal leave.
- b. You may not engage in representational activity back to the U.S. Government or accept compensation attributable to such activities. As a practical matter, this means you may not work for a Government contractor in the federal workplace, since this is inherently representation. You may work for the contractor outside the federal workplace in a behind-the-scenes role, subject to the prohibitions discussed below.

## 9. POST-GOVERNMENT EMPLOYMENT

- c. There is a prohibition on holding state or local civil office while still on active duty.
- d. The FY17 NDAA reinstated the prohibition against appointment of retired military Service Members to civil service positions in or under the Department of Defense within 180 days of their retirement date without a waiver.

### 5. Post-Government Employment Restrictions

a. Lifetime Restriction. You may not represent back to the U.S. Government (any agency or employee) on behalf of new employer on any “particular matter” involving specific parties you participated in “personally and substantially” while in Government service. This restriction lasts for the lifetime of the matter.

b. Two Year Restriction. For two years after retiring or leaving Government service, you may not represent back to Federal Government (any agency or employee) on any particular matter involving specific parties that, although you did not participate in personally and substantially, was nonetheless “pending under your official responsibility” during the last year of your Government service. For Reserve Component Flag Officers. A new two year period begins after each period of AD/AT/ADSW in the preceding year for those particular matters under your official responsibility.

c. One Year “Cooling Off Period”. For one year after retiring or leaving Government service, you may not represent back, on behalf of your new employer, on any matter, to the agency you served with during your last year of Government service. For Reserve Component Flag Officers. A one year cooling off period begins every time you complete a period of AD/AT/ADSW (even if only one day), but only if you served 60 or more days total AD/AT/ADSW in the 365 days prior to the date your AD/AT/ADSW terminated. The 60 days need not have been consecutive to trigger the cooling-off period. Therefore, each time you complete AD/AT/ADSW, you should count the number of AD/AT days you served during the past 365 days and consult with your Ethics Counselor. This particular statutory prohibition illustrates the importance of record keeping by reserve component Flag Officers, particularly those whose employer is a non-Government entity that seeks official actions from the Department of the Navy.

d. FY18 NDAA § 1045 (Section 1045). Retired or former Flag Officers are prohibited from lobbying contacts with covered executive branch officials<sup>1</sup> in the DoD. For instance, the definition of a lobbying contact includes, but is not limited to, written and oral communications on behalf of the former Flag Officer’s client or employer directed to covered executive branch officials in the DoD regarding federal legislation, rules, regulations, Executive orders, programs, or policies. Retired or former Flag Officers are also prohibited from lobbying contacts and other lobbying activities with covered executive branch officials outside of the DoD pertaining to a matter with respect to the DoD. The definition of lobbying activities includes efforts in support

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<sup>1</sup> Covered officials include the President and Vice President, any officer or employee in the Executive Office of the President, any officer or employee serving in a position at levels I-V of the Executive Schedule (i.e., Presidentially appointed, Senate confirmed officials), any member of the uniformed services in the grade of O-7 or above, except for officers in the Reserve Component who are not serving on a period of active duty, any non-career official serving in a confidential or policy making position (e.g., non-career SES or Schedule C appointee). It does NOT include career SES appointees, limited term SES appointees, or limited emergency SES appointees.

## 9. POST-GOVERNMENT EMPLOYMENT

of lobbying contacts (e.g., research or other background work that is intended for use in a lobbying contact). Therefore, some behind the scenes assistance is prohibited.

(1) The prohibitions for retired Flag Officers in grades O-9 and O-10 apply for two years after the date of retirement or separation. The prohibitions for retired Flag Officers in grades O-7 and O-8 apply for one year after the date of retirement or separation.

(2) DoDI 1000.32 reflects the DoD interpretation and implementation of Section 1045. Contact your Ethics Counselor for more detailed guidance concerning the provisions and impact of Section 1045 as it pertains to your specific circumstances.

6. **Procurement Integrity Act**. Those who served in a defined position on contracts over \$10 million within the last year of Federal service:

- a. are banned from receiving compensation from the contractor for one year, and
- b. must submit a written request to include a completed DD Form 2945 to their Ethics Counselor for post-Government employment advice if they expect to receive compensation from any DoD contractor and their employment commences within two years of leaving the service.

### 7. **Foreign Entities**

- a. There is a one year restriction against representing, aiding or advising (no representation or behind the scenes assistance).
- b. Employment by or payments from Foreign Governments require advance consent of Secretary of the Navy and Secretary of State through Chief of Naval Personnel<sup>2</sup>. Failure to obtain advance consent for such foreign employment or payments may result in forfeiture of military retired pay. This includes compensation for employment, as well as payments for speeches, travel, meals, lodging, or registration fees.

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<sup>2</sup> FY21 NDAA (Section 641) added an additional reporting requirement for employment or compensation from foreign governments.

## **10. POLITICAL ACTIVITIES OF MILITARY MEMBERS AND ANTI-LOBBYING**

1. **Key References:** 10 U.S.C. § 973; DoDD 1344.10; 18 U.S.C. § 1913; 31 U.S.C. § 1352; 5 C.F.R. Part 2635; DoD 5500.07-R; 2020 DoD Public Affairs Guidance for Political Campaigns and Elections; OGE Opinion LA-15-03 of Apr 15.

### **2. Key Concepts**

a. Personnel may not engage in activities that associate the DoD with any “partisan” political campaign or election, candidate, cause, or issue.

b. Service members must refrain from participating in any activity while in uniform or while wearing any official insignia that may be prejudicial to the performance of military/Government duties or is likely to bring discredit upon the Armed Forces.

c. In addition, some activities that could be viewed as associating the Armed Forces directly or indirectly with a partisan political cause or candidate, although not expressly prohibited, must be avoided. Although the Hatch Act only applies to civilian personnel, the Office of Special Counsel routinely issues guidance on such matters and can be a useful resource for advising all personnel.

d. Social media can quickly blur the lines of what is permissible in these areas. For example, you may support a political candidate on your social media site. However, if the social media site or post identifies you as an active duty service member, then the entry should also clearly and prominently state that the views expressed are personal to you and not those of the Department of Defense. Service members may “friend” or “like” the Facebook page, or follow the Twitter account of a political party or partisan candidate, campaign, group, or cause. However, service members cannot engage in activities with respect to those entities’ social media accounts that would constitute political activity. For example, service members cannot suggest that others like, friend, or follow a political party, partisan political candidate, campaign, group, or cause, or forward an invitation or solicitation from those entities to others.

### **3. Permissible Activities**

a. Register, vote, and express a personal opinion on political candidates and issues (service members may vote while in uniform, but may not imply DoD endorsement when expressing personal opinions on political candidates or issues).

b. Promote and encourage others to vote (in general, not for a particular candidate or issue).

c. Join a partisan or nonpartisan political club and attend its meetings (not in uniform).

d. Serve as an election official with prior approval by the Secretary of the Navy. What constitutes an “election official” may vary by jurisdiction and could include Election Day poll workers.

e. Sign a petition as a private citizen as long as the signing does not obligate the member to engage in partisan political activity.

## **10. POLITICAL ACTIVITIES OF MILITARY MEMBERS AND ANTI-LOBBYING**

f. Make monetary contributions to a political organization, party, or committee outside the work place.

g. Display a political bumper sticker on private vehicles, whether on or off base.

h. Attend partisan or nonpartisan political fundraising activities, meetings, rallies, debates, conventions, or activities as a spectator when not in uniform and no inference or appearance of official sponsorship, approval, or endorsement can reasonably be drawn.

### **4. Impermissible Activities**

a. Participate in partisan political fundraising activities, rallies, conventions, management of campaigns, or debates, without respect to uniform or appearance of official sponsorship or endorsement. Mere attendance as a spectator at such an event while not in uniform does not amount to “participation.”

b. Use official authority or influence to interfere with an election, solicit votes, or solicit contributions.

c. Speak before a partisan political gathering or gathering that promotes a partisan political party or cause.

d. Participate in any radio, television, or group discussion as an advocate for or against a partisan political party, candidate, or cause.

e. Fundraise in Federal spaces for any political cause or candidate.

f. Display partisan political signs at one’s residence on a military installation, even if that residence is part of a privatized housing development.

g. Sell tickets for or promote partisan political dinners and fundraising events.

h. Attend partisan political events as an official representative of the Armed Forces.

### **5. Prohibition on Lobbying**

a. The Anti-Lobbying Act (ALA) prohibits the use of appropriated funds, directly or indirectly, to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter or other device intended to unlawfully influence a Member of Congress in acting upon legislation, i.e. “grassroots” lobbying efforts. Violations may result in civil penalties ranging from \$10,000 to \$100,000.

b. The annual Defense Appropriations Act (DAA) typically contains prohibitions on the use of appropriated funds. A provision prohibiting the use of funds for publicity or propaganda purposes has appeared in the DAA in some form since 1951. The DAA provides that no



## 10. POLITICAL ACTIVITIES OF MILITARY MEMBERS AND ANTI-LOBBYING

appropriated funds shall be used to directly or indirectly influence Congressional action on legislation or appropriation matters pending before Congress.

c. Together the ALA and DAA prohibit large-scale publicity campaigns to generate citizen contacts with Congress on behalf of a position on legislation or appropriations. These provisions make it unlawful to use appropriated funds to encourage, pressure, or suggest that private citizens, citizens' groups, corporations, associations or other organizations contact or solicit Congress on legislative matters.

6. **Permissible Activities**: The following are examples of permissible activities if no direct or indirect lobbying is involved, i.e., no appeal is made by service members acting in their official capacities or in uniform to members of the public suggesting they contact their elected representatives to indicate support of or opposition to legislative matters.

a. Discussing the merits of legislative proposals cleared by the Administration with members of private organizations, industry representatives or private citizens.

b. Commenting about specific legislative initiatives during meetings sponsored by private organizations, industry representatives or private citizens.

c. Distributing information and documents on current Navy programs and initiatives to private organizations and citizens, retirees and members of the Guard, Reserves and Active Forces.

d. Responding to specific requests for information from Members of Congress and staff members.

e. Expressing agency views regarding the merits or deficiencies of legislation provided the public is not urged to contact Congress.

f. Service members may contact a member or employee of Congress or other Government official for the purpose of supporting or opposing legislation, provided that: it occurs on the individual's own non-duty time, no federal resources are used, and the contact is clearly and explicitly made in the service member's personal, rather than official, capacity.

(1) Navy officials operating in their official capacity should coordinate contacts with members of Congress and Congressional staff with the Office of Legislative Affairs.

### 7. **Impermissible Activities**

a. Distributing materials that directly or indirectly suggest or encourage persons or organizations to contact Members of Congress in support of Navy programs.

b. Suggesting in speeches or discussions with industry officials or private organization representatives that they encourage employees or membership to contact Members of Congress.

## **10. POLITICAL ACTIVITIES OF MILITARY MEMBERS AND ANTI-LOBBYING**

- c. Writing an article explicitly urging readers to contact Members of Congress to support pending legislation.
- d. Conducting a grass roots lobbying effort to encourage communication with Congress, such as a program of courtesy telephone calls to organizations, private associations, or citizens encouraging them to lobby Congress for specific legislation or appropriations.

## 11. FINANCIAL DISCLOSURE REPORTING

1. **Key References:** 5 U.S.C. App. §§ 101–111 (Ethics in Government Act) as amended by P.L. 112–105 (the STOCK Act); 5 C.F.R. Part 2634; DoD 5500.07-R Ch. 7; Office of Government Ethics (OGE) Public Financial Disclosure Guide

### 2. **Annual Public Financial Disclosure Reporting: OGE Form 278e**

#### a. **Who Must File**

(1) All active and reserve Flag Officers who serve on active duty 60+ days during any calendar year.

(2) Each reserve Flag Officer is responsible for tracking his or her own days on active duty. To confirm the number of days, consult Navy Reserve Flag Matters (N095) at (703) 614-4656.

b. **How to File.** The Deputy Secretary of Defense mandates e-filing via the Integrity website, which is available at: <https://www.integrity.gov/efeds-login/>. All current filers have a profile in Integrity and OJAG (Code 13) creates profiles for newly promoted Flag Officers throughout the year.

#### c. **Goal: Complete, Accurate Disclosure**

(1) Substantive Purpose. These required reports help you and your Ethics Counselor, supervisor, and Designated Agency Ethics Official (DAEO) identify potential conflicts of interest that may exist between your official duties and your private financial interests and affiliations.

(2) Technical Completeness. To perform a meaningful conflicts review, all required information must be reported with the requisite level of detail. The required contents in your public financial disclosure report is spelled out in the law.

(3) DON must certify you are current on all filings before acting on retirement/nomination requests.

#### d. **What to Report**

(1) The JAG's annual letter to all Flag Officers lists the most important instructions for reporting specific assets in Integrity. The JAG's letter should be read in its entirety because it contains statutory and regulatory changes affecting your report. The Integrity website also maintains a helpful filer resource page at <https://community.max.gov/display/OGEEExternal/Information+for+Filers> (must be logged in).

(2) The OGE Public Financial Disclosure Guide also provides detailed instructions and examples for reporting specific assets: <https://www2.oge.gov/Web/278eGuide.nsf>.

## 11. FINANCIAL DISCLOSURE REPORTING

(3) Best practices: (1) Consult with your Ethics Counselor before you file. They have additional training and resources to assist. (2) Take ownership of your own report data. Directing aides to input your data for you is permissible, but not recommended (especially if your financial portfolio is complicated). (3) Consider assigning your financial advisor as a “filer designee” in Integrity.

e. **Due Dates**. There is a \$200 fee for reports filed late. In brief:

(1) Active Duty New Entrants must file within 30 days of appointment to flag rank.

(2) Reservist New Entrants must file within 15 days of reaching 61 days of active duty in a given calendar year. However, if on full-time orders, it is recommended to file within 30 days of appointment to flag rank.

(3) All Incumbents who serve over 60 days on active duty in a given calendar year must file an annual report by 15 May of the next calendar year.

(4) Retiring Officers will have different filing requirements depending on the retirement date. You are strongly encouraged to file your termination report in Integrity before your retirement date. You can sign as early as 15 days before retirement. Hard copy reports are no longer allowed. Regardless of whether you are able to file before your retirement date, you are strongly encouraged to set up username and password access to Integrity prior to deactivation of your CAC. This will allow you access to Integrity after you leave active duty to file your termination report or make any necessary adjustments during the review and certification process.

f. **Routing Procedures**

(1) New Entrant or Incumbent reports must be reviewed and signed by your supervisor first and then your Ethics Counselor. The supervisor must sign before the report moves in the Integrity workflow.

(2) Combined or Termination reports are reviewed by your Ethics Counselor, but not supervisor.

(3) Timeliness: Supervisors must review all reports **within 30 days** after submitted in Integrity. The supervisor review is limited to analyzing for potential conflicts of interest. This review often will be brief. Supervisors are required to examine disclosed entries for any apparent conflicts with the filer’s official duties, but supervisors need not check for technical errors.

(4) Requests for Information: On occasion, filers will be asked to provide additional information on their report. Please respond promptly to ensure the DON meets all required timelines.

## 11. FINANCIAL DISCLOSURE REPORTING

### 3. Periodic Transaction Reports: OGE Form 278-T

#### a. Generally

(1) Periodic transaction reports (OGE Form 278-T) are required throughout the year anytime you sell, purchase, or exchange stocks, bonds, and other securities, if the amount of the transaction exceeds \$1,000. Transactions by your spouse or dependent children must also be reported.

(2) Reserve Flag Officers with reportable transactions are also required to file 278-Ts if they are required to file an Annual or Termination report in a given year, and if a reportable transaction is after the date the Annual or Termination report filing requirement is triggered. Reserve Flag Officers are encouraged to begin filing 278-Ts in January if they anticipate serving more than 60 days on Active Duty during the calendar year to make completion of the required annual report easier.

(3) You are not required to file periodic transaction 278-T reports for transactions involving excepted investment funds (such as mutual funds), cash (such as certificates of deposit, checking, savings, or money market accounts), thrift savings plan, or real property.

(4) A best practice to ensure timely filing of 278-T reports is to set a monthly calendar reminder and/or assign your financial manager as a filer designee in Integrity to allow them to pre-populate 278-T reports for you.

#### b. Filed Electronically

(1) Periodic transaction 278-T reports must be filed via Integrity. This allows all previously reported transactions to be pre-populated when completing your Annual report due the following May.

(2) Transactions reported on 278-T must be reported on the Annual OGE Form 278e. This will be easy if you have filed your required transaction reports during the year.

(3) Because Integrity has synchronized 278-T and 278e reporting, any omissions in periodic transaction reporting will be readily apparent.

#### c. Due Dates

(1) OGE Form 278-T reports are due within 30 days of receiving notification of a reportable transaction, but no later than 45 days after the transaction.

(2) If you have a financial advisor who trades on your behalf, you are still responsible for timely filing the periodic transaction 278-T report, and should instruct your advisor accordingly.

## 11. FINANCIAL DISCLOSURE REPORTING

(3) Best practice for those who trade regularly: Set a monthly calendar reminder to review whether a 278-T filing is required, or ensure your financial advisor files the 278-Ts for you in Integrity.

### d. **Penalties**

(1) Some public filers have incurred penalties for failure to report financial transactions. This is preventable.

(2) Requests to waive penalties on the basis of “extraordinary circumstances” must be submitted as soon as possible. Your Ethics Counselor should submit waiver request to OJAG (Code 13), who will route the request to the Deputy Judge Advocate General for final adjudication.

## 4. **Confidential Financial Disclosure Reporting: OGE Form 450**

### a. **Generally**

(1) In addition to their own financial disclosure requirements, Flag Officers may have supervisory responsibility for other financial disclosure filers.

(2) The confidential program applies to employees below the level of O-7/SES. The OGE Form 450 does not require the collection of as much detailed information as the OGE Form 278. These filers hold positions where they exercise discretion warranting a review of their interests for any potential conflicts of interest.

(3) In order to identify potential conflicts of interest that may exist between an employee’s official duties and their private financial interests and affiliations, Flag Officers should ensure their commands maintain a robust financial disclosure program with annual reviews of positions that require filing of an OGE 450, timely review of reports by supervisors, and certification by cognizant Ethics Counselors.

### b. **Who Must File**

(1) Commanding officers, heads, deputy heads, and executive officers of Navy shore installations with 500 or more employees;

(2) Special Government Employees, Highly Qualified Experts, and personnel serving under the Intergovernmental Personnel Act;

(3) Civilian employees at grade GS-15 and below, and military members below grade O-7 when they participate personally and substantially, through decision or exercise of significant judgment, and without substantial supervision and review, in taking an official action for: (1) contracting or procurement, (2) administering or monitoring grants, subsidies, licenses, or other Federal benefits, (3) regulating or auditing any non-Federal entity, or (4) other activities in which the final decision may have a direct and substantial economic impact on the interests of any non-

## 11. FINANCIAL DISCLOSURE REPORTING

Federal entity (catch-all). Note that it is the impact that the particular matter has on the non-federal entity, not the individual's action in that matter, which triggers the filing requirement. Contact your Ethics Counselor for assistance in determining who must file OGE 450s.

c. **How to File**. OGE 450 are filed electronically on the Financial Disclosure Management (FDM) website at <https://www.fdm.army.mil/>.

## 12. RELATIONS WITH NON-FEDERAL ENTITIES

1. **Key References:** 10 U.S.C. §1033, 10 U.S.C. §1589(b); 18 U.S.C. §203, 18 U.S.C. §205, 5 C.F.R. § 2635.502; 5 C.F.R. § 2635.702; DoD 5500.07-R; DoDI 5410.19; DoDI 1000.15; DoDI 5410.19; DepSecDef Memo of 23 July 96; USD (P&R) Memo of 30 Nov 12; SECNAVINST 5720.44C CH-2

### 2. **Key Concepts**

a. With limited exception, Government property and resources may not be utilized for private or personal purposes. However, if certain conditions are met, logistical support and speakers may be provided to events sponsored by non-federal entities (NFE).

b. Endorsement of NFEs in an official capacity is generally prohibited.

c. DoD employees may not actively and visibly participate in fundraising in their official capacities.

d. Flag Officers must be aware of potential conflicts and restrictions regarding service on the boards of, and participation with, NFEs even in their personal capacity.

### 3. **Logistical Support for NFE Events**

a. Speakers, panel members or other participants, and, on a limited basis, the use of DoD facilities and equipment, may be provided as logistical support of an event sponsored by an NFE when it is determined:

(1) The support does not interfere with the performance of official duties and would in no way detract from readiness;

(2) DoD community relations with the immediate community and/or other legitimate DoD public affairs or military training interests are served by the support;

(3) It is appropriate to associate DoD/DON with the event;

(4) The event is of interest and benefit to the local civilian community, the command or organization providing the support, or any other part of DoD;

(5) The command or organization is able and willing to provide the same support to comparable events that meet the criteria of this subsection and are sponsored by other similar NFEs;

(6) The use is not restricted by other statutes or regulations (such as those which limit support that is not based on customary community relations or public affairs activities); and

(7) No admission fee (beyond what will cover the reasonable costs of sponsoring the event) is charged for the event, or DoD support to the event is incidental to the entire event in accordance with public affairs guidance.



## 12. RELATIONS WITH NON-FEDERAL ENTITIES

b. Best practice: Coordinate engagements with NFEs through your public affairs officer or CHINFO to ensure alignment with Navy strategic messaging priorities and external outreach goals.

4. **Endorsements**. Endorsement of an NFE may neither be stated nor implied by DoD employees in their official capacities and employees may not use their titles, positions, or organization names to suggest official endorsement or preferential treatment of any NFE except those explicitly authorized by statute or designated by the Secretary of Defense (e.g., Navy-Marine Corps Relief Society).

### 5. **Fundraising**

a. Active and visible participation in fundraising activities in support of NFEs by DoD employees in their official capacity is generally prohibited. Mere attendance at an event and delivering official remarks on behalf of the agency is not considered active and visible participation so long as an official's attendance and speech is not used to promote the event.

b. When attending fundraising events Flag officers should ensure their attendance or participation is not used to promote the fundraising aspects of the event. Examples of activities to avoid are sitting at the head table or dais with certain donors to the event, participation in photo lines or VIP receptions for donors, or being asked to present an award to non-DoD personnel at the event.

6. **Official Participation with NFE**. Flag Officers may be appointed to serve as liaisons to certain NFEs to represent DoD interests when there is a significant and continuing DoD interest in such representations. There are restrictions on what such liaisons can do and close coordination with your ethics counselor is important to understand these restrictions. Flag Officers may not manage an NFE in their official capacity.

### 7. **Personal Participation with NFE**

a. Unless otherwise prohibited, Flag Officers may voluntarily become members of, and actively participate in, NFEs in their personal capacity. Conflict of interest rules apply and personnel may not participate in their official capacity in any particular matters that may directly and predictably affect the NFE. Flag Officers involved with NFEs in their personal capacity must be mindful to not improperly endorse, or give the appearance of official endorsement of the NFE, nor may they permit their official title, position, or organization name to be used by the NFE. Flag Officers may use their rank and service when identifying themselves in connection with the NFE.

b. Flag Officers may not represent the NFE back to the Government. This includes requests for limited logistical support of the NFE from the Navy (e.g., requesting base access for the NFE, approving speaker support, etc.). Additionally, Flag Officers may not give their NFE preferential treatment, and they must ensure they do not create an appearance they are using their official position to assist the NFE in any way. Flag Officers should be mindful of the appearance

## 12. RELATIONS WITH NON-FEDERAL ENTITIES

of preferential treatment towards an NFE based on their spouse's or dependent's relationship with the NFE.

c. No Flag Officers are permitted to accept compensation for serving as officers or members of boards of NFEs in their personal capacity.<sup>1</sup> Further, Flag Officers may not serve in management of, or on the boards of, companies that do business with DoD or focus their business on military personnel regardless of compensation.

d. Service in certain positions with an NFE are required to be disclosed on annual financial disclosure reports. Consult your ethics counselor to ensure complete reporting of any covered outside positions.

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<sup>1</sup> Exceptions are permitted, with approval of the Service Secretary, for professional associations and family-held entities.